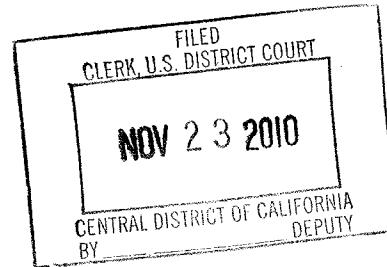


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18 situated

19 **UNITED STATES DISTRICT COURT**
20
21 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

22 PETER WILSON, On behalf of himself
23 and all others similarly situated,

24 Case No. CV-09-07560 GW (V ркx)

25 Honorable George H. Wu

26 **REDACTED SECOND AMENDED
27 CLASS ACTION COMPLAINT**

28 Plaintiff,
v.

GATEWAY, INC., a California
corporation; and NATIONAL
ELECTRONICS WARRANTY LLC, a
Delaware corporation;

Defendants.

1. **BREACH OF CONTRACT
(Based on Unconscionability)**
2. **BREACH OF CONTRACT
(Based on Breach of Implied
Covenant of Good Faith and Fair
Dealing)**
3. **UNJUST ENRICHMENT**
4. **UNFAIR BUSINESS
PRACTICES (Business &
Professions Code § 17200)**
5. **CONSUMERS LEGAL
REMEDIES ACT (Civil Code §
1750)**

DEMAND FOR JURY TRIAL

GATEWAY, INC.,

v. **Third Party Plaintiff,**

NATIONAL ELECTRONICS
WARRANTY LLC, a Delaware
corporation, CHARTIS WARRANTY
SERVICES, INC. (F.K.A. AIG
Warranty Services and Insurance
Agency, Inc.) a Delaware corporation;
and CHARTIS WARRANTYGUARD,
INC. (F.K.A. AIG Warranty Guard,
Inc.), a Delaware corporation,

Third Party Defendants.

CALDWELL
LESLIE &
PROCTOR

1 Plaintiff, by his attorneys, Meiselman, Denlea, Packman, Carton & Eberz P.C.
 2 and Caldwell Leslie & Proctor, PC, as and for his class action complaint, alleges,
 3 with personal knowledge as to his own actions, and upon information and belief as
 4 to those of others, as follows:

5 **Nature of this Case**

6 1. Since 2005, more than 1.7 million customers, including Plaintiff,
 7 purchased an extended service warranty from the Professional Business Line (“Pro
 8 Business”) of Gateway, Inc. (“Gateway”), paying millions of dollars in the
 9 aggregate for the security of knowing that their computers or other equipment would
 10 be repaired or replaced in the event of a malfunction. The warranties were sold by
 11 Gateway on behalf of Defendant National Electronics Warranty LLC (“NEW”), one
 12 of the nation’s largest providers of extended warranty plans, which agreed to
 13 “administer” the warranties. The actual “servicing” was initially done by a
 14 subsidiary of Gateway, Gateway Companies, Inc. (“GCI”), with whom NEW
 15 contracted for this purpose.

16 2. Although Gateway aggressively marketed and sold these “Pro-ESP
 17 warranties”¹ to customers, Gateway eventually determined that it was not profitable
 18 to actually service the warranties. Relying on a one-sided, unconscionable
 19 contractual provision, in October 2007 Gateway purportedly assigned all the
 20 outstanding Pro-ESP warranties to MPC Corporation (“MPC”), a corporation that
 21 Gateway knew or should have known was on the brink of insolvency. As part of
 22 that transaction, Gateway also sold to MPC its subsidiary, GCI, which was
 23 responsible for servicing the warranties.

24

25 1 As used herein, the terms “Pro-ESPs” and “Pro-ESP warranties” refer to the
 26 “extended service plan” warranties sold by Gateway’s Professional Business
 27 Division (“Pro Business”), including but not limited to: Extended Service Plan,
 28 Gateway Priority Access, Extended Service Plan with Accidental Damage
 Protection, and Limited Warranty Agreement.

1 3. [REDACTED]

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13 4. As Gateway should have anticipated, the additional burden of servicing
14 Gateway's unwanted warranties was too much for MPC, and it filed for bankruptcy
15 in November 2008. Accordingly, MPC has not serviced any warranty claims since
16 shortly after it filed for bankruptcy, and can no longer do so.

17 5. To make matters worse, Gateway continued to direct its Pro-ESP
18 customers to MPC after MPC ceased operations. Gateway's technical support
19 website continued to instruct Pro-ESP customers to call a toll-free number assigned
20 to MPC that was out of service, and Pro-ESP customers who attempted to call or
21 email Gateway for help were similarly directed to call that same non-working
22 telephone number. Those customers who were able to contact MPC were informed
23 that MPC was not able to service their warranty needs.

24 6. Gateway's continued efforts to "deflect" its Pro-ESP customers to the
25 bankrupt MPC were not a mistake, however, as made clear from Gateway's
26 response to customers, such as the Plaintiff, who contacted Gateway to complain
27 that MPC could not provide the service they were contractually owed. In response
28 to a Better Business Bureau complaint filed by Mr. Wilson, Gateway stated: "We

1 do understand the frustration that Mr. Wilson may be experiencing; however,
 2 Gateway is no longer responsible for this account.” In other words, Gateway told its
 3 customers, who had spent millions of dollars on the Pro-ESP warranties: It’s not
 4 *our* problem, it’s yours.

5 7. Gateway did not act alone in shirking its responsibilities to Mr. Wilson
 6 and the more than 1.7 million other customers who believed that their Pro-ESP
 7 warranties would be serviced. NEW was also complicit in the purported assignment
 8 of the warranties to MPC, because it knew that GCI was sold along with the
 9 warranties to the at-risk-of-insolvency MPC, and failed to do anything after MPC’s
 10 bankruptcy to ensure that customers could receive the service under the NEW
 11 warranties Gateway sold on its behalf.

12 8. As a result of Gateway’s and NEW’s misconduct, Gateway’s Pro-ESP
 13 warranty customers hold worthless warranties for which they paid considerable
 14 sums. In contrast, Gateway profited considerably by selling the warranties, not once
 15 but twice—to customers, and then to MPC. Moreover, the sale of the Pro Business
 16 line allowed Gateway to shed an unprofitable portion of its business, making it well-
 17 positioned to have its more profitable business (the Consumer Division) acquired by
 18 the computer giant, Acer, Inc., for more than \$700 million. NEW also benefited
 19 from its complicity; pursuant to its contract with Gateway, NEW was responsible
 20 for reimbursing first Gateway, and then MPC, for the servicing performed on
 21 customers’ computers. From at least December 2008 to June 2010, Gateway’s
 22 “deflection” of customers to the bankrupt MPC resulted, on information and belief,
 23 in an enormous windfall to NEW, which therefore did not have to reimburse any
 24 entity for service, since none was performed.

25 9. This suit is brought on behalf of a nationwide class of all persons who
 26 purchased from Gateway a Pro-ESP warranty that was unexpired as of October 1,
 27 2007 (the “Class”). It seeks, *inter alia*, damages, restitution and/or compensatory
 28 damages for Plaintiff and each Class Member, including but not limited to damages,

1 reimbursement, attorneys' fees, and the costs of this suit. Just as important, Plaintiff
2 seeks injunctive and declaratory relief to prohibit Defendants from continuing to
3 engage in their unfair, unlawful, and deceptive trade practices and, specifically, to
4 require Gateway and NEW to administer and service the Pro-ESP warranties.

5 10. This action, which was first filed in October 2009, has already served
6 as the catalyst for Gateway to take some corrective action for the benefit of the Pro-
7 ESP warranty holders. Although Gateway continued to direct its customers to MPC
8 through May 2010, despite its knowledge that MPC could not provide service to
9 those customers, Gateway finally changed its website in June 2010—almost
10 certainly in response to this litigation—to inform customers that they could obtain
11 service by contacting other providers. Although this is a necessary step, it does not
12 make up for Gateway’s bait-and-switch tactics in purportedly assigning the Pro-ESP
13 warranties to a different company to begin with, nor does it resolve the damages
14 suffered by Mr. Wilson and others similarly situated who sought the bargained-for
15 service—from Gateway and from MPC—but did not receive it from either company
16 (or NEW), and so were forced to pay out-of-pocket for services that should have
17 been covered.

Jurisdiction and Venue

19 11. Jurisdiction in this civil action is authorized pursuant to 28 U.S.C.
20 § 1332(d), as some class members' citizenship is diverse from Defendants, there are
21 more than 100 class members, and the amount in controversy is in excess of \$5
22 million.

23 12. Venue is proper in this district under 28 U.S.C. § 1391(b)(2), as a
24 substantial part of the events or omissions giving rise to Plaintiff's claims occurred
25 in the Central District of California.

26 13. Venue is also proper in this district under 28 U.S.C. § 1331(a)(2), on
27 the grounds that a substantial part of the events relating to Plaintiff's claims
28 occurred in the Central District of California.

Parties

2 14. Plaintiff Peter Wilson is a resident of the State of California, San
3 Bernardino County. Mr. Wilson purchased a Gateway computer with an extended
4 warranty Gateway purported to assign to MPC. Neither company will honor the
5 warranty. Accordingly, Mr. Wilson's warranty has been rendered worthless.

6 15. Defendant Gateway, Inc. is incorporated under the laws of the State of
7 Delaware, with its principal place of business located in Irvine, California. Gateway
8 does actual business throughout the State of California, including through the direct
9 sale of its merchandise in the State.

10 16. Plaintiff is informed and believes and thereon alleges that Defendant
11 National Electronics Warranty LLC (“NEW”) is a corporation organized and
12 existing under the laws of Delaware, with its principal place of business in Sterling,
13 Virginia. According to NEW’s website, NEW has been “the industry’s leading
14 provider of extended service plans (ESPs) and product protection programs for
15 consumer products since 1983.”

Operative Facts

17 | A. Gateway Becomes One of the Country's Most Trusted Computer Brands

17. Founded in 1985 in an Iowa farmhouse, Gateway founders Ted Waitt
18 and Mike Hammond successfully developed a business of direct sales of personal
19 computers (“PCs”).
20

18. Gateway capitalized on its homespun, Midwestern roots by
19. implementing advertising campaigns with the tagline “Computers from Iowa?” and
20. by shipping its products in distinctive cow-patterned boxes. For several years, cows
21. featured prominently in Gateway’s marketing materials and Gateway even sold dolls
22. of its cow mascot.

26 19. In 1991, *Inc.* magazine named Gateway the fastest growing private
27 company in America.

1 20. In 1993, Gateway completed an initial public offering and started
 2 trading on the NASDAQ. By the mid-1990s, Gateway became a fixture on the
 3 *Fortune* 500 list of the largest companies worldwide.

4 21. After relocating its headquarters to California in 1998, Gateway
 5 operated three divisions: (1) the Professional Business, which sold computers to
 6 educational institutions, small businesses and governmental entities, as well as
 7 individuals within those particular markets (“Pro Business”); (2) the Consumer
 8 Business, which focused on direct sales to consumers (the “Consumer Business”);
 9 and (3) the retail division, which sold computers through major retailers such as
 10 Best Buy and Wal-Mart. Many students purchased Gateway computers and Pro-
 11 ESP warranties through the Pro Business division.

12 22. Gateway can easily discern whether a customer bought a product from
 13 the Pro Business or Consumer lines, as those lines have different model numbers
 14 assigned to them.

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16 **B. Gateway’s Market Share Erodes as It Struggles to Compete in the
 17 Competitive Computer Field**

18 23. After riding high through the late 1990s, Gateway struggled in the dot-
 19 com bust.

20 24. In the early 2000s, Gateway struggled to return to profitability by
 21 withdrawing from international markets, reducing retail outlets and entering into the
 22 consumer electronics markets.

23 25. At the same time, the once-struggling Apple Inc. was reinvigorated
 24 with the introduction of new products and services that began to erode Gateway’s
 25 market share.

26 26. Moreover, Gateway’s expansion into the consumer electronics
 27 marketplace saw only mild success and the company withdrew from that market
 28 segment in 2004. Struggling to compete against these market forces, Gateway

1 determined to focus its energies on maximizing the profit potential for its consumer
 2 businesses and attracting an acquirer. The problem: Gateway's Pro Business line,
 3 which had warranty liabilities of approximately \$60 million.

4 27. On August 27, 2007, Gateway announced that it was "considering"
 5 selling its Pro Business line, which would help Gateway streamline expenses by
 6 \$130 million to \$150 million annually. Later that same day, Gateway announced it
 7 was being acquired by Acer, Inc., the Taiwan-based technology giant. The
 8 acquisition by Acer, which was valued at \$710 million, did not include Gateway's
 9 Pro Business.

10 28. Desperate to shed its Pro Business in an effort to complete the Acer
 11 acquisition, Gateway turned to Idaho-based MPC Corporation. *Within a mere week*,
 12 on September 4, 2007, Gateway trumpeted a deal with MPC in which MPC agreed
 13 to acquire Gateway's Pro Business for \$90 million. Expressly included as part of
 14 the MPC deal was that MPC would assume Gateway's warranty obligations to its
 15 Pro-ESP warranty customers, a liability estimated to be at least \$60 million.

16 29. Gateway knew or should have known that MPC was not able to
 17 shoulder the burden of the Pro-ESP warranties. At the time the Pro Business sale
 18 was announced, MPC itself was on the brink of insolvency. Indeed, MPC's Form
 19 10-Q for the period ended September 30, 2007—the quarter in which the acquisition
 20 of Gateway's Pro Business was announced—which was publicly filed with the
 21 United States Securities and Exchange Commission warned:

22 *[T]here can be no assurance that we will be able to*
 23 *continue in the ordinary course of business due to our*
 24 *significant liquidity constraints, unprofitable operations*
 25 *and negative operating cash flows. . . .*

26 We face liquidity constraints

27 We may need to raise a significant amount of additional
 28 funds to satisfy vendor payment obligations and to fund

1 our business if our losses continue. There can be no
2 assurance that we will be able to secure additional sources
3 of financing. Even if we do obtain additional funding, the
4 amount of such funding may not be sufficient to fully
5 address all of our liquidity constraints, which could
6 negatively and materially impact our business and results
7 of operations.

8 30. Despite these dire public warnings, in its desperation to rid itself of
9 liabilities and increase its attractiveness to Acer, Gateway ignored altogether the
10 interests of its customers who spent good money for warranties. Thus, Gateway
11 purportedly assigned its Pro-ESP warranty obligations to MPC knowing that the
12 alleged assignment to MPC materially impaired the customers' ability to obtain
13 performance on a warranty claim.

14 31. Immediately upon the close of the MPC deal in October 2007, Gateway
15 disclaimed any liability for warranty obligations for its Pro-ESP warranty customers
16 and referred them to MPC. MPC, however, was not financially or otherwise
17 prepared to fulfill the warranty obligations.

18 32. In fact, the risk to Gateway's warranty holders was immediately
19 apparent. MPC's Form 10-K for the period ended December 31, 2007 identified
20 several "risk factors" to its business including, "Gateway's warranty and other
21 obligations assumed by us may exceed those contemplated at the time of the
22 acquisition." Specifically, MPC's Form 10-K reported:

23 In connection with our acquisition of [Gateway's]
24 Professional Business, we assumed all of the warranty
25 obligations and other obligations . . . of the Professional
26 Business. The amount of the assumed obligations and
27 timing of related cash flows to fund such obligations may
28 differ from our estimates and could adversely impact our

1 limited ability to fund these obligations and adversely
2 impact our relationships with customers and suppliers.

3 MPC also reported that Gateway had become the largest holder of MPC's common
4 stock and, as such, "is able to exercise significant influence over matters subject to
5 shareholder approval."

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7 **C. Gateway Takes Steps to "Deflect" All Pro-ESP Warranty Customer
8 Requests to MPC**

9 33. Notwithstanding MPC's precarious financial situation,

10 [REDACTED]

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20 34. [REDACTED]

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1 35. Similar prompts were provided when customers emailed Gateway or
2 visited Gateway's technical support website.

3 36. In addition, the Pro-ESP warranties themselves instructed customers to
4 call Gateway at 1-877-485-1464 in order to obtain service. [REDACTED]

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37. [REDACTED]

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38. [REDACTED]

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1 39. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 40. [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12

13 **D. The Gateway Acquisition Pushes MPC into Insolvency**

14 41. Within just a few months of acquiring Gateway's Pro Business, MPC's
15 liquidity problems reached a crisis stage. On May 8, 2008, the American Stock
16 Exchange ("AMEX") notified MPC that it failed to satisfy a continued listing rule.
17 Specifically, MPC had stockholder equity of less than \$2 million and sustained
18 losses in two of its three most recent fiscal years.

19 42. Although the AMEX accepted MPC's plan to regain compliance with
20 its listing standards, MPC was given a deadline of November 9, 2008 to comply.

21 43. MPC, however, could not regain compliance with the exchange's
22 listing standards. On October 27, 2008, MPC announced that the NYSE Alternext
23 US LLC (which acquired the AMEX on October 1, 2008) intended to file a delisting
24 application with the Securities and Exchange Commission striking MPC's common
25 stock and warrants from the exchange. On November 4, 2008, MPC was delisted
26 from the NYSE Alternext as a result of its sustained losses.

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1 44. MPC admitted that it appeared “questionable as to whether we will be
 2 able to continue operations.” Gateway did nothing to stave off MPC’s inevitable
 3 bankruptcy petition.

4 45. With this final blow, MPC could no longer function. On November 6,
 5 2008, MPC filed a voluntary petition for bankruptcy pursuant to Chapter 11 of the
 6 United States Bankruptcy Code in the United States District Court for the District of
 7 Delaware. In a statement concerning the bankruptcy filing, MPC’s chief executive
 8 officer attributed MPC’s extensive losses to “unforeseen issues surrounding our
 9 integration of the Gateway Professional business unit”

10 46. By December 29, 2008, MPC announced that it would liquidate all of
 11 its remaining assets and close its doors. Unfortunately for the Pro-ESP warranty
 12 holders, MPC determined that it would not be able to service those warranties after
 13 its bankruptcy.

14 47. Even after MPC ceased operations and indicated that it could not
 15 service the Pro-ESP warranties, Gateway continued to “deflect” its customers to
 16 MPC and persisted in its refusal to offer any service to those Pro-ESP warranty
 17 customers who had warranty claims.

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19 **E. The Tangled Relationship Between Gateway and NEW**

20 48. [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 49. Historically, Gateway sold various extended warranties to customers
 27 who wished to insure that their products would be serviced for a period beyond the
 28 limited warranty provided to them at the time of sale. In doing so, Gateway

1 recognized that he sale of extended service warranties could provide an additional
2 source of revenue for its business. In order to implement the sale of extended
3 warranties, Gateway sought out a third party with experience in constructing and
4 pricing warranty programs to help Gateway ensure that its warranty programs were
5 profitable. [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 50. [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

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18 [REDACTED]

19 51. [REDACTED]

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24 [REDACTED]

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26 52. [REDACTED]

27 [REDACTED]

28 [REDACTED]

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5 **F. Plaintiff Peter Wilson Purchases a Gateway Computer with a Now-
6 Worthless Extended Warranty**

7 57. On July 20, 2005, Plaintiff Peter Wilson, a resident of Big Bear,
8 California, as a freshman student at Master's College, located in Santa Clarita,
9 California, purchased a Gateway computer, M250-E Laptop, serial number
10 0035612802, along with a 4-year extended warranty. Plaintiff purchased the
11 Gateway Extended Service Plan, Priority Access, Accidental Damage and Limited
12 Warranty Plan (collectively, "Extended Warranty Agreement"), which is one of the
13 Pro-ESP warranties offered by Gateway. The total purchase price was \$1,475, plus
14 \$121.69 in sales tax. The total purchase price was added to his Master's College
15 billing statement, which Plaintiff paid in full.

16 58. Plaintiff never had the ability to negotiate the terms of use of the
17 Extended Warranty Agreement. Rather, Gateway, a large multinational company
18 with superior bargaining strength, drafted and unilaterally imposed the contract
19 terms upon Wilson in a standardized form contract. Under the circumstances,
20 Gateway relegated to Wilson only the opportunity to adhere to the contract or reject
21 it.

22 59. The Extended Warranty Agreement is a single-spaced, standard-form
23 contract comprised of four separate sections. It uses a reduced, small-sized font on
24 each of its twenty single-spaced pages, which each contain between 60 and 65 lines
25 of text. Buried on page 16, cloaked under a non-descript heading ("General"), and
26 lumped together with several other unrelated contractual provisions (including
27 choice of law, severability, modification, and integration provisions) is a totally one-

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1 sided clause regarding assignment of warranty rights and obligations (“Unilateral
2 Assignment Provision”).

3 60. Gateway contends that the Unilateral Assignment Provision allows it to
4 assign the Extended Warranty Agreement and Gateway's obligation under the
5 agreement to virtually anyone it wants, without notice to or consent from the
6 customer, and without regard to the purported assignee's ability to perform. As
7 such, consumers are left impotent to ensure that Gateway's warranty obligations will
8 be assigned to a person or entity capable of providing the warranty services they
9 purchased. Moreover, the warranty purports to deny customers any recourse to
10 Gateway in the event that the assignee is unable to perform. Finally, the Extended
11 Warranty Agreement expressly precludes customers from assigning the Gateway
12 Extended Warranty Agreement.

13 61. Gateway clearly imposed the one-sided Unilateral Assignment
14 Provision in its standard-form Extended Warranty Agreement to gain an unfair
15 advantage over its customers. The provision grossly and disproportionately favors
16 Gateway at the expense of customers.

17 62. On or about February 6, 2009, with approximately five months
18 remaining until Plaintiff's Gateway Extended Warranty Agreement terminated,
19 Plaintiff's Gateway laptop ceased functioning completely and was in need of repair.
20 The Extended Warranty Agreement includes a section entitled "Customer
21 Requirements" for obtaining service, and provides the following options:

22 To obtain service under this Plan:

- **Click:** You can reach Gateway support by going to <http://www.gateway.com/support> for online, E-mail and online chat support.
- **Call Gateway Direct:** You can call Gateway's technical support hotline at 1-877-485-1464 or Automated

3 Pursuant to the terms of the Extended Warranty Agreement, Plaintiff contacted
4 Gateway directly at this time to exercise his Gateway Extended Warranty
5 Agreement and have Gateway honor its agreement to repair Plaintiff's computer.

6 63. Upon contacting Gateway, Plaintiff was informed by a Gateway
7 representative that, due to the recent sale of the Pro Business line, all service and
8 support for Plaintiff's computer was now being handled by MPC, notwithstanding
9 that MPC had ceased all operations in December 2008.

10 64. Plaintiff then contacted MPC, only to find out that MPC was out of
11 business and could not service Plaintiff's computer. Plaintiff contacted Gateway for
12 a second time to complain that, after paying approximately \$1,000 for a Pro-ESP
13 warranty and with more than five months remaining until the Pro-ESP warranty
14 expired, Plaintiff was entitled to have his laptop computer warranty honored by
15 Gateway. Gateway refused, and again directed him to MPC, informing Plaintiff that
16 it was no longer responsible to warrant his computer as it had sold Plaintiff's
17 warranty to MPC, a bankrupt corporation. In response to a Better Business Bureau
18 complaint filed by Mr. Wilson, Gateway stated: "We do understand the frustration
19 that Mr. Wilson may be experiencing; however, Gateway is no longer responsible
20 for this account."

21 65. Gateway never directed Plaintiff to contact any other service provider
22 or other party and instead simply “deflected” its service obligation to the bankrupt
23 MPC, without more. Nor did NEW take any steps to ensure that Plaintiff received
24 the service for which he had paid.

25 66. As such, Plaintiff's Pro-ESP warranty is worthless, and Plaintiff has
26 suffered damage.

1 **G. Approximately 1.7 Million Customers Have Been Damaged as a Result of**
 2 **Gateway's Deception**

3 67. Approximately 1.7 million customers like Peter Wilson have suffered
 4 as a result of Gateway's deception. Web sites are full of complaints from
 5 individuals and small business owners left with worthless warranties. *Infoworld* and
 6 other technology publications have reported consumer grievances over the
 7 worthlessness of Gateway warranties. Numerous complaints have been submitted to
 8 the Better Business Bureau and state attorney generals.

9 68. Unfortunately, many of the individuals suffering from Gateway's
 10 deception are students who acquired their computers through the Pro Business
 11 division, because that unit serviced educational institutions. In addition to pecuniary
 12 losses, Gateway's refusal to honor its warranties has negatively impacted the studies
 13 of students throughout the nation.

14

15 **H. Gateway's Remedial Actions and Third Party Complaint**

16 69. Plaintiff filed his original class action complaint on October 16, 2009.
 17 As of that date and through at least May 12, 2010, Gateway's technical support
 18 website continued to refer Pro-ESP warranty customers to MPC. A true and correct
 19 copy of a screen shot from Gateway's technical support website as of May 12, 2010,
 20 is attached hereto as Exhibit "A."

21 70. Plaintiff is informed and believes, and upon that basis alleges, that
 22 Gateway finally recognized—almost certainly in response to this litigation—that it
 23 was improper to continue to refer its warranty customers to a bankrupt entity that
 24 refused to honor the Gateway warranties and so, on or before June 29, 2010,
 25 updated its technical support webpage to direct its Pro-ESP warranty customers to
 26 entities other than MPC. In particular, the technical support page now directs Pro-
 27 ESP warranty customers to contact Third-Party Defendants Chartis Warranty
 28 Services, Inc. (formerly known as AIG Warranty Services, Inc.) and Chartis

1 Warranty Guard, Inc. (formerly known as AIG Warranty Guard, Inc.) (collectively
 2 "Chartis"). A true and correct copy of a screen shot from Gateway's technical
 3 support page as of June 29, 2010, is attached hereto as Exhibit "B."

4 71. Plaintiff is informed and believes, upon that basis alleges, that this
 5 lawsuit was a catalyst motivating Gateway to provide this remedy, and that the the
 6 lawsuit provided this catalytic effect by threat of victory, not by dint of nuisance and
 7 threat of expense.

8 72. On August 16, 2010, Gateway formally demanded that Chartis, along
 9 with Defendant National Electronics Warranty Corporation ("NEW"), defend and
 10 indemnify itf rom these class action claims. Shortly thereafter, Gateway obtained
 11 leave to file its Third-Party Complaint.

12 73. [REDACTED]

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21 74. Also according to allegations in Gateway's Third-Party Complaint and
 22 the documents produced by Gateway and NEW to date, NEW continued to have
 23 these obligations after Gateway sold its Pro Business to MPC, including its
 24 subsidiary GCI, and therefore NEW remains responsible for honoring the Pro-ESP
 25 warranties held by Plaintiff and other similarly situated persons.

26 75. Plaintiff is informed and believes, and upon that basis alleges, that
 27 NEW was aware of Gateway's improper assignment of Pro-ESP warranties to MPC,
 28 and thatn either MPC nor NEW serviced or administered the Pro-ESP warranties

1 after MPC's bankruptcy, and NEW has taken no steps to ensure that Plaintiff and
2 others similarly situated can obtain the bargained-for service under their warranties.

3 76. NEW benefited from this complicity. [REDACTED]

4 [REDACTED]
5 Plaintiff is informed and believes, and upon that basis
6 alleges, that MPC did not provide the same level of service as Gateway from
7 October 2007 until its bankruptcy in December 2008, [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 77. Furthermore, Gateway and NEW were both aware of, and had access
13 to, the toll-free telephone number (1-877-485-1464) listed in the Pro-ESP warranties
14 for customer support. This number apparently went defunct soon after MPC's
15 bankruptcy in late 2008. Although Gateway and NEW were aware that the number
16 no longer worked, both waited until at least June 2010 to attempt to secure the
17 number so that servicing might resume.

18 78. [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 **Class Action Allegations**

26 79. Plaintiff brings this action on his own behalf and additionally, pursuant
27 to Rule 23 of the Federal Rules of Civil Procedure, on behalf of a nationwide class

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1 of all persons who purchased from Gateway a Pro-ESP warranty that was unexpired
 2 as of October 1, 2007 (the "Class").

3 80. Excluded from the Class are Defendants; any parent, subsidiary, or
 4 affiliate of Defendants; any entity in which Defendants have or had a controlling
 5 interest, or which Defendants otherwise control or controlled; and any officer,
 6 director, employee, legal representative, predecessor, successor, or assignee of
 7 Defendants.

8 81. This action is brought as a class action for the following reasons:

9 a. The Class consists of at least thousands of persons and is
 10 therefore so numerous that joinder of all members, whether otherwise required or
 11 permitted, is impracticable;

12 b. There are questions of law or fact common to the Class that
 13 predominate over any questions affecting only individual members, including:

14 i. whether the Unilateral Assignment Provision is
 15 unconscionable and unenforceable, and, accordingly, Gateway breached its
 16 contractual obligations by failing to honor its warranty obligations based on
 17 its purported assignment of its warranty obligations to a nearly insolvent
 18 corporation for the purpose of materially impairing Plaintiff's and other Class
 19 Members' ability to obtain the performance for which they had paid
 20 substantial sums;

21 ii. whether Defendants violated contractual warranties and
 22 obligations, including the covenant of good faith and fair dealing, by refusing
 23 to honor their warranty obligations purportedly based on the assignment of
 24 Gateway's warranty obligations to an insolvent corporation for the purpose of
 25 materially impairing Plaintiff's and other Class Members' ability to obtain the
 26 performance for which they had paid substantial sums;

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iii. whether Gateway and NEW unjustly enriched themselves by selling warranty obligations and eviscerating their customers' ability to use warranty services;

iv. whether NEW failed to administer or service the warranties pursuant to its obligations after MPC's bankruptcy;

iv. whether the Defendants engaged, and continue to engage, in unfair, unlawful and deceptive trade practices;

v. whether the Defendants' conduct violated provisions of the Consumers Legal Remedies Act;

vi. whether members of the Class have sustained damages and/or other compensable losses and, if so, the proper measure thereof; and

vii. whether declaratory and injunctive relief is necessary to prohibit Defendants from engaging in the conduct described herein.

4 c. The claims asserted by Plaintiff are typical of the claims of the
5 members of the Class;

6 d. Plaintiff will fairly and adequately protect the interests of the
7 Class, and Plaintiff has retained attorneys experienced in class and complex
8 litigation, including related litigation involving contracts and consumer fraud;

i. Absent a class action, Class Members as a practical matter will be unable to obtain redress, Defendants' violations of its legal obligations will continue without remedy, additional customers will be harmed, and Defendants will continue to retain their ill-gotten gains;

ii. It would be a substantial hardship for most individual members of the Class if they were forced to prosecute individual actions;

iii. When the liability of Defendants has been adjudicated, the Court will be able to determine the claims of all members of the Class;

iv. A class action will permit an orderly and expeditious administration of Class claims, foster economies of time, effort, and expense, and ensure uniformity of decisions; and

v. The lawsuit presents no difficulties that would impede its management by the Court as a class action.

f. Defendants have acted on grounds generally applicable to Class Members, making class-wide relief appropriate; and

8 g. The prosecution of separate actions by individual members of the
9 Class would create a risk of incompatible standards of conduct for Defendant and of
10 inconsistent or varying adjudications for all parties.

11 82. Defendants' violations of the common law and statutory law are
12 applicable to all members of the Class.

13 83. The contemplated notice to the Class Members will be through direct
14 mail to each Class Member.

FIRST CLAIM FOR BREACH OF CONTRACT –
UNCONSCIONABILITY OF ASSIGNMENT PROVISION
**(Brought by all Plaintiffs including the Class Representative,
in His Individual and Representative Capacity, and the Class
Members Against Gateway.)**

21 84. Plaintiff repeats and realleges each and every allegation contained
22 above, as though fully set forth herein.

23 85. Plaintiff and other Class Members purchased Pro-ESP warranties from
24 Gateway with the justified expectation that Gateway would honor its obligations
25 under the warranties to offer repair and replacement services. To obtain the benefit
26 of the Pro-ESP warranties, Plaintiff and other Class Members paid substantial sums.

27 86. Plaintiff and the Class Members have fulfilled their obligation under
28 the Pro-ESP warranty contract by paying for the warranty protection.

1 87. When entering into the contract for warranty services, Plaintiff and
 2 other Class Members had no ability to negotiate the Pro-ESP warranties' terms,
 3 including the terms regarding assignment of the warranty rights and obligations.
 4 Instead, Gateway used its superior bargaining strength to impose those terms upon
 5 customers. Customers had no meaningful choice whether to accept or reject the
 6 provisions. Thus, the Pro-ESP warranties were the product of oppression and the
 7 lack of negotiation, not any meaningful choice.

8 88. Every Pro-ESP warranty contains a Unilateral Assignment Provision as
 9 part of its boilerplate terms. As described above, Gateway hid the Unilateral
 10 Assignment Provision within its small-type, prolix printed form; disguised it under a
 11 nebulous heading; and buried it among sundry other unrelated contractual terms.

12 89. The Unilateral Assignment Provision is, accordingly, procedurally
 13 unconscionable.

14 90. In imposing the Unilateral Assignment Provision, Gateway sought to
 15 create for itself an unlimited ability to evade its obligations under the warranty by
 16 assigning those obligations to whomever it desired. It did so without providing any
 17 protection or assurance to consumers that Gateway's warranty obligation would
 18 only be assigned to people capable of providing the purchased warranty services,
 19 and Gateway sought to disclaim any responsibility to consumers in the event the
 20 assignee could not perform the obligations consumers paid Gateway to provide.

21 91. The Unilateral Assignment Provision is totally one-sided and
 22 unreasonably favorable to Gateway. It uniquely favors Gateway at the expense of
 23 customers, and Gateway clearly hid that term in its standard-form contract to gain
 24 unfair advantage over its consumers.

25 92. The Unilateral Assignment Provision is, as outlined above,
 26 substantively oppressive because it reallocates risk between consumers and Gateway
 27 in an objectively unreasonable and unexpected manner by permitting Gateway to
 28 assign its obligations in complete derogation of the rights of consumers.

1 93. Both procedurally and substantively, the Unilateral Assignment
 2 Provision is unduly oppressive and unconscionable.

3 94. Under California Civil Code § 1670.5, the Unilateral Assignment
 4 Provision is unenforceable by Gateway. The application of the Unilateral
 5 Assignment Provision should be limited to avoid the unconscionable result of
 6 permitting Gateway to evade its obligations under the Pro-ESP warranties—and
 7 thereby depriving Plaintiff and other Class Members of their bargained-for rights
 8 under the warranties—by assigning its warranty obligations to a party unable to
 9 perform them. Thus, Gateway’s purported assignment of its warranty obligation
 10 does not relieve Gateway of its obligations under the Pro-ESP warranties, because
 11 the purported “consent” of Plaintiff and the Class Members to that assignment under
 12 the Unilateral Assignment Provision is unconscionable and unenforceable. Absent
 13 consent, Gateway is precluded as a matter of law from assigning its warranty
 14 obligations, and must satisfy those obligations itself.

15 95. Additionally, to the extent that the Unilateral Assignment Provision
 16 purports to release Gateway from its obligations and require consumers to look
 17 solely to the assignee for performance without regard to the assignee’s ability to
 18 perform, that provision is unconscionable and unenforceable. Gateway, therefore,
 19 continues to be liable to perform those warranty obligations.

20 96. Gateway’s refusal to honor its warranty obligations to Plaintiff and
 21 other Class Members is a material breach of contract, which has resulted in harm to
 22 Plaintiff and other Class Members who cannot obtain the benefit of their bargain.

23 97. By reason of the foregoing, Defendant has breached the parties’
 24 contract and is liable to Plaintiff and the other members of the Class.

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SECOND CLAIM FOR BREACH OF CONTRACT
INCLUDING THE COVENANT OF GOOD FAITH AND FAIR DEALING
**(Brought by all Plaintiffs including the Class Representative,
in His Individual and Representative Capacity, and the Class
Members Against Gateway.)**

6 98. Plaintiff repeats and realleges each and every allegation contained
7 above, as though fully set forth herein.

8 99. Plaintiff and other Class Members purchased Pro-ESP warranties from
9 Gateway with the justified expectation that Gateway would honor its obligations
10 under the warranties to offer repair and replacement services. To obtain the benefit
11 of the warranties, Plaintiff and other Class Members paid substantial sums.

12 100. Plaintiff and the Class Members have fulfilled their obligations under
13 the Pro-ESP warranty contract by paying for the warranty protection.

14 101. The essential purpose of the Pro-ESP warranty for which Plaintiff and
15 the Class Members paid Gateway was the provision by Gateway of warranty
16 service.

17 102. Desperate to rid itself of liabilities and increase its attractiveness to
18 potential purchasers, Gateway consciously and deliberately ignored the interest of
19 its customers and purportedly assigned its warranty obligations knowing that the
20 assignment materially impaired the customers' ability to obtain performance on a
21 warranty claim. Gateway's assignment of the Pro-ESP warranties to MPC was in
22 bad faith, with knowledge that the warranties would be rendered worthless.

23 103. Because of Gateway's conscious, deliberate and objectively
24 unreasonable conduct, Plaintiff and other Class Members have not obtained the
25 reasonably expected benefit of their bargain from Gateway and the essential purpose
26 of the Pro-ESP warranty contract has been unfairly frustrated.

27 104. Gateway breached the covenant of good faith and fair dealing by
28 refusing to honor its contractual obligations based on its purported assignment of

1 those obligations to a nearly insolvent company that it knew or should have known
2 was unable to perform.

3 105. Gateway's refusal to honor its warranty obligations is a material breach
4 of contract, which has resulted in harm to Plaintiff and other Class Members who
5 cannot obtain the benefit of their bargain.

6 106. By reason of the foregoing, Gateway has breached the Pro-ESP
7 warranty agreement, including the covenant of good faith and fair dealing and its
8 obligation to provide warranty services, and, therefore, is liable to Plaintiff and the
9 other members of the Class.

10 107. As a direct and proximate result of Gateway's actions as described
11 herein, Plaintiff and the Class have suffered, and continue to suffer, injury in fact
12 and have lost money as a result of Defendant's deception.

13

14 **THIRD CLAIM FOR UNJUST ENRICHMENT**

15 **(Brought by all Plaintiffs including the Class Representative,
16 in His Individual and Representative Capacity, and the Class
17 Members Against All Defendants.)**

18 108. Plaintiff repeats and realleges each and every allegation contained
19 above, as though fully set forth herein.

20 109. Plaintiff and the Class have conferred benefits on Defendants by paying
21 value for Pro-ESP warranties that they expected the Defendants to honor throughout
22 the warranties' terms.

23 110. Defendants knowingly and willingly accepted monetary benefits from
24 Plaintiff and the Class, although Defendants did not honor their Pro-ESP warranty
25 obligations. Rather, Defendants profited from the sales of Pro-ESP warranties,
26 which were then sold to a nearly insolvent company only to leave the Plaintiff and
27 the Class with worthless warranties.

28

1 111. Under the circumstances described herein, it is inequitable for
2 Defendants to retain the full monetary benefit at the expense of Plaintiff and the
3 Class.

4 112. By engaging in the conduct described above, Defendants have been
5 unjustly enriched at the expense of Plaintiff and the Class and are required, in equity
6 and good conscience, to compensate Plaintiff and the Class for harm suffered as a
7 result of Defendants' actions.

8 113. As a direct and proximate result of Defendants' unjust enrichment,
9 Plaintiff and the Class have suffered injury and are entitled to reimbursement,
10 restitution, and disgorgement from Defendants of the benefit conferred by Plaintiff
11 and the Class.

12

13 **FOURTH CLAIM FOR UNFAIR COMPETITION UNDER**
14 **CALIFORNIA LAW (Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

15 **(Brought by all Plaintiffs including the Class Representative,
16 in His Individual and Representative Capacity, and the Class
17 Members Against All Defendants.)**

18 114. Plaintiff repeats and realleges each and every allegation contained
19 above, as though fully set forth herein.

20 115. The aforesaid conduct of Defendants constitutes unfair competition in
21 violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.* In particular, Gateway relied
22 on an unconscionable assignment provision to transfer the Pro-ESP warranties to a
23 company that was financially unable to service those warranties, made
24 misrepresentations to Pro-ESP warranty customers about MPC's ability to service
25 the warranties, refused to honor the warranties after MPC's bankruptcy, and
26 continued to "deflect" Pro-ESP warranty customers to the bankrupt MPC.

27

116. [REDACTED]

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6 117. Defendants engaged in these unfair practices to increase their profits.
7 Accordingly, Defendants have also engaged in unlawful trade practices, as defined
8 and prohibited by Section 17200 *et seq.* of the California Business and Professions
9 Code.

10 118. The aforementioned practices, which Defendants have used, and
11 continue to use, to their significant financial gain, also constitute unlawful
12 competition and provide an unlawful advantage over Defendants' competitors as
13 well as injury to the general public.

14 119. Plaintiff, and those similarly situated, relied to their detriment on
15 Defendants' false, deceptive, unfair, and illegal representations that the Pro-ESP
16 warranties would be serviced. Plaintiff, and those similarly situated, would not have
17 purchased the Pro-ESP warranties but for the Defendants' deceptive, unfair and
18 unlawful representations. Plaintiff, and the Putative Class Members, were similarly
19 induced to purchase the Pro-ESP warranties with the belief that they would receive
20 the full value of the warranties. Plaintiff, and the Putative Class Members, would
21 not have purchased the Pro-ESP warranties but for Defendants' deceptive, unfair,
22 and unlawful representations.

23 120. Plaintiff seeks, on behalf of all those similarly situated, full restitution
24 of monies, as necessary and according to proof, to restore any and all monies
25 acquired by Defendants from Plaintiff, the general public, or those similarly situated
26 by means of the unfair and/or deceptive trade practices complained of herein, plus
27 interest thereon.

28

1 121. Plaintiff seeks, on behalf of all those similarly situated, an injunction to
2 prohibit Defendants from continuing to engage in the unfair trade practices
3 complained of herein. Specifically, Plaintiff seeks an Order by this Court requiring
4 Defendants to administer and service any Pro-ESP warranties where the warranty
5 remains valid. The acts complained of herein occurred, at least in part, within four
6 (4) years preceding the filing of the Class Action Complaint.

7 122. Plaintiff and those similarly situated are further entitled to, and do seek,
8 both a declaration that the above-described trade practices are unfair, unlawful,
9 and/or fraudulent, and injunctive relief restraining Defendants from engaging in any
10 such deceptive, unfair and/or unlawful practices in the future. Such misconduct by
11 Defendants, unless and until enjoined and restrained by Order of this Court, will
12 continue to cause injury in fact to the general public and the loss of money and
13 property in that Defendants will continue to violate the laws of California, unless
14 specifically ordered to comply with the same. This expectation of future violations
15 will require current and future customers to repeatedly and continuously seek legal
16 redress in order to recover monies paid to Defendants, to which Defendants are not
17 entitled. Plaintiff, those similarly situated and/or other consumers nationwide have
18 no other adequate remedy at law to ensure future compliance with the California
19 Business and Profession Code alleged to have been violated herein.

20 123. As a direct and proximate cause of such actions, Defendants have
21 enjoyed, and continue to enjoy, significant financial gain in an amount which will be
22 proven at trial, but which is in excess of the jurisdictional limit of this Court.

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1 **FIFTH CLAIM FOR VIOLATION OF THE CALIFORNIA CONSUMERS**
 2 **LEGAL REMEDIES ACT (California Civil Code § 1750 *et seq.*)**
 3 **(Brought by all Plaintiffs including the Class Representative,**
 4 **in His Individual and Representative Capacity, and the Class**
 5 **Members Against All Defendants.)**

6 124. Plaintiff repeats and realleges each and every allegation contained
 7 above, as though fully set forth herein.

8 125. This cause of action is brought pursuant to the California Consumers
 9 Legal Remedies Act, California Civil Code § 1750 *et seq.* (“CLRA”).

10 126. Defendants’ actions, representations, and conduct have violated, and
 11 continue to violate, the CLRA, because they extend to transactions that are intended
 12 to result, or which have resulted, in the sale or lease of goods or services to
 13 consumers.

14 127. Plaintiff and other Putative Class Members are “consumers,” as that
 15 term is defined by the CLRA in California Civil Code § 1761(d).

16 128. The provision of computers and Pro-ESP warranties for the service
 17 thereof that Plaintiff and others similarly situated purchased from Defendants were
 18 “goods” within the meaning of California Civil Code § 1761.

19 129. By engaging in the actions, representations, and conduct described
 20 above, Defendants have violated and continue to violate § 1770(a)(9), (14), (16),
 21 and (19) of the California Civil Code by advertising goods or services with the
 22 intent not to sell them as advertised. Specifically, in violation of § 1770(a)(9), (14),
 23 (16), and (19), Gateway relied on an unconscionable assignment provision to
 24 transfer the Pro-ESP warranties to a company that was financially unable to service
 25 those warranties, made misrepresentations to Pro-ESP warranty customers about
 26 MPC’s ability to service the warranties, refused to honor the warranties after MPC’s
 27 bankruptcy, and continued to “deflect” Pro-ESP warranty customers to the bankrupt
 28 MPC. Likewise, NEW failed to administer or service the Pro-ESP warranties after

1 MPC's bankruptcy,

2 [REDACTED]

3 130. CIVIL CODE § 1782 NOTICE: Plaintiff, on or about October 12,
4 2010, provided to Defendants notice and demand that within thirty (30) days from
5 that date, Defendants correct, repair, replace or otherwise rectify the unlawful,
6 unfair, false, and or deceptive practices complained of herein. Defendants failed to
7 do so.

8 131. Pursuant to California Civil Code § 1780, on behalf of similarly
9 situated Class Members, Plaintiff seeks damages of at least \$100 million, punitive
10 damages, and an award of \$5,000 for each Class Member who is a disabled person
11 or a senior citizen, and restitution of any ill-gotten gains due to Defendants' acts and
12 practices.

13 132. Plaintiff also requests that this Court award him costs and reasonable
14 attorneys' fees pursuant to California Civil Code § 1780(d).

15

16 WHEREFORE, Plaintiff respectfully requests that the Court enter judgment
17 against Defendants as follows:

18 1. Certifying this action as a class action, pursuant to Rule 23(a) and
19 Rules 23(b)(2) and/or 23(b)(3) of the Federal Rules of Civil Procedure, with a class
20 as defined above;

21 2. On Plaintiff's First Cause of Action, declaring the Unilateral
22 Assignment Provision unenforceable and awarding Plaintiff and the Class all
23 appropriate remedies, including but not limited to damages as well as consequential
24 and incidental damages;

25 3. On Plaintiff's Second Cause of Action, awarding Plaintiff and the Class
26 all appropriate remedies, including but not limited to damages as well as
27 consequential and incidental damages;

28

CALDWELL
LESLIE &
PROCTOR

1 4. On Plaintiff's Third Cause of Action, awarding Plaintiff and the Class
2 all appropriate remedies, including but not limited to reimbursement, restitution, and
3 disgorgement of all profits unjustly retained by Defendants;

4 5. On Plaintiff's Fourth Cause of Action, awarding Plaintiff and the Class
5 all appropriate remedies, including but not limited to restitution and injunctive
6 relief.

7 6. On Plaintiff's Fifth Cause of Action, awarding Plaintiff and the Class
8 all appropriate remedies, including but not limited to damages, as well as
9 consequential, incidental, statutory and punitive damages, and restitution and
10 injunctive relief.

11 7. Awarding Plaintiff and the Class interest, costs and attorneys' fees; and

12 8. Awarding Plaintiff and the Class such other and further relief as this
13 Court deems just and proper.

14

15 DATED: November 23, 2010 Respectfully submitted,

16

17 MEISELMAN, DENLEA, PACKMAN,
18 CARTON & EBERZ, P.C.
19 CALDWELL LESLIE & PROCTOR, PC

20

21 By

 / MSR

22 ROBYN C. CROWTHER

23 Attorneys for Plaintiff and others similarly
24 situated

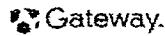
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EXHIBIT A



News & Information

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Professional Segment Acquisition by MPC

MPC Corporation ("MPC") purchased Gateway's professional division (e.g. small, medium & large business, government and education lines) in October of 2007. Pursuant to the parties' agreement, MPC acquired, among other things, contracts between Gateway and its professional customers and any associated warranty service and support obligations. As such, all warranty requests should be directed to MPC's attention. Gateway is no longer responsible for warranty service and support obligations for customers who purchased professional division products.

Support Content

As a courtesy to former Gateway professional customers, Gateway is providing links to drivers, downloads, specifications, user guides and other support documents on our website. This information is provided on an "as-is" basis. Gateway does not warrant the accuracy, correctness, reliability, comprehensiveness, or currency of any content. Gateway disclaims all warranties, express or implied, regarding any content, and further disclaims liability for any consequences from the use or misuse of any content.

Additional Resources

Gateway does not endorse or support the use of third parties to provide support to former Gateway professional customers. However, Gateway is aware of a support forum for former Gateway professional customers looking for suggestions on how to receive support.

Gateway products are available through select retailers.

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EXHIBIT A

EXHIBIT B



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Third-Party Extended Service Plans

Some Gateway professional division customers purchased third-party Extended Service Plans through Gateway. Those plans are generally products of AIG Warranty Guard, Inc. ("AIGWG") or AIG Warranty Services and Insurance Agency, Inc. ("AIGWS"). Many of those plans provide contact information for AIGWG and AIGWS. For example, "AIGWS and AIGWG can be contacted at 300 Riverside Plaza, Chicago, IL 60606. Telephone 1-800-250-3819." Those plans also provide that, "If, within sixty (60) days we have not paid a covered claim, provided you with a refund or you are otherwise dissatisfied you may make a claim directly to the insurance company." As of May 1, 2010, AIGWS and AIGWG's telephone number (1-800-250-3819) plays the following recorded message:

Thank you for calling the warranty division of Charts.

Please listen carefully to this message. This is not a customer service or repair line. That number can be located in the service paragraph of your terms and conditions. This line is designed for claims that are over 60 days old. If you have such a claim you must send a complete and legible copy of the service plan contract you received, a copy of the original receipt, any other supporting documents, along with a brief description of what has taken place. Make sure to include all your contact information, preferably an email address. You can email it to warranty@aig.com, you can fax it to 1-866-688-8879, or you can mail it to our physical address at 80 Pine Street, 13th Floor, New York, NY 10005. After reviewing your information we will begin our research, and if we have questions, we will contact you.

If you are a company inquiring about our product, please send either an email or a fax with your contact information and we will get back to you.

Again, if you are a customer calling for any customer issue, such as service, registration, cancellation, parts, etc., contact the repair service number listed in your terms and conditions in the service paragraph. These customer lines are open 24 hours a day 7 days a week to assist you. To hear this message again, please press one.

Please review the terms of your specific third-party Extended Service Plan for applicable information.

Additional Resources

Gateway does not endorse or support the use of third parties to provide support to former Gateway professional customers. However, Gateway is aware of a support forum for former Gateway professional customers looking for suggestions on how to receive support.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 1000 Wilshire Boulevard, Suite 600, Los Angeles, California 90017-2463.

On November 23, 2010, I served true copies of the following document(s) described as **REDACTED SECOND AMENDED CLASS ACTION COMPLAINT** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address harper@caldwell-leslie.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

BY OVERNIGHT DELIVERY: I enclosed said document(s) in an envelope or package provided by the overnight service carrier and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on November 23, 2010, at Los Angeles, California.

Lauren Harper

SERVICE LIST
Wilson v. Gateway
Case No. CV-09-07560 GW (VBKx)

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